

## Part 1 General Provisions

### **31A-40-101 Title.**

This chapter is known as the "Professional Employer Organization Licensing Act."

Enacted by Chapter 318, 2008 General Session

### **31A-40-102 Definitions.**

As used in this chapter:

- (1)
  - (a) Except as provided in Subsection (1)(b), "administrative fee" means a fee charged to a client by a professional employer organization for a professional employer service.
  - (b) "Administrative fee" does not include an amount or a fee received by a professional employer organization that is:
    - (i) compensation of a covered employee;
    - (ii) a benefit for a covered employee;
    - (iii) a payroll-related tax;
    - (iv) an unemployment insurance contribution;
    - (v) withholding of compensation for a covered employee;
    - (vi) a workers' compensation premium; or
    - (vii) another assessment paid by a professional employer organization to or on behalf of a covered employee under a professional employer agreement.
- (2) "Assurance organization" means a person designated as an assurance organization in accordance with Section 31A-40-303.
- (3) "Client" means a person who enters into a professional employer agreement with a professional employer organization.
- (4) "Coemployer" means:
  - (a) a client; or
  - (b) a professional employer organization.
- (5) "Coemployment relationship" means a relationship:
  - (a) that is intended to be ongoing rather than a temporary or project specific relationship; and
  - (b) wherein the rights and obligations of an employer that arise out of an employment relationship are allocated between coemployers pursuant to:
    - (i) a professional employer agreement; or
    - (ii) this chapter.
- (6) Notwithstanding Section 31A-1-301, "controlling person" means a person who, individually or acting in concert with one or more persons, owns, directly or indirectly, 10% or more of the equity interest in a professional employer organization.
- (7) "Covered employee" means an individual who has a coemployment relationship with a client and a professional employer organization if the conditions of Section 31A-40-203 are met.
- (8) "Employment related economic incentive" means:
  - (a)
    - (i) a credit against or exemption from taxes due the state or a political subdivision of the state; or
    - (ii) an economic inducement, including a loan or a grant; and
  - (b) if the credit, exemption, or economic inducement described in Subsection (8)(a):

- (i) is offered by the state or a political subdivision of the state; and
  - (ii) has an eligibility requirement that relates in whole or in part to employment including:
    - (A) the number of employees; or
    - (B) the nature of the employment.
- (9) "Federal executive agency" means an executive agency, as defined in 5 U.S.C. Sec.105, of the federal government.
- (10) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
- (11) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
- (12) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
- (13) "Guarantee" means to assume an obligation of another person if that person fails to meet the obligation.
- (14) "Licensee" means a person licensed under this chapter.
- (15) "Professional employer agreement" means a written contract by and between a client and a professional employer organization that provides for:
  - (a) the coemployment of a covered employee;
  - (b) with respect to a covered employee, the allocation of a right or obligation of an employer between:
    - (i) the client; and
    - (ii) the professional employer organization; and
  - (c) the assumption of the obligations imposed by this chapter by:
    - (i) the client; or
    - (ii) the professional employer organization.
- (16)
  - (a) Subject to Subsection (16)(b), "professional employer organization" means a person engaged in the business of providing a professional employer service.
  - (b) "Professional employer organization" does not include:
    - (i) a person that:
      - (A) does not:
        - (I) have as a principal business activity the entering into of a professional employer arrangement; or
        - (II) hold the person out as a professional employer organization; and
      - (B) shares an employee with a commonly owned company within the meaning of Sections 414(b) and (c), Internal Revenue Code;
    - (ii) an independent contractor arrangement by which a person:
      - (A) assumes responsibility for the product produced or service performed by the person or the person's agent; and
      - (B) retains and exercises primary direction and control over the work performed by an individual whose service is supplied under the independent contractor arrangement; or
    - (iii) a person providing temporary help service.
- (17) "Professional employer organization group" means two or more professional employer organizations that are majority owned or commonly controlled or directed by the same one or more persons.
- (18) "Professional employer service" means the service of entering into a coemployment relationship under this chapter under which all or a majority of the employees who provide a service to a client, or a division or work unit of a client, are covered employees.
- (19) "Qualified actuary" means an individual who:
  - (a) is a member in good standing of a professional actuarial accreditation organization designated by the department by rule;

- (b) is qualified to sign a statement of actuarial opinion or annual statement for a professional employer organization in accordance with the qualification standards for an actuary signing an opinion or annual statement as provided by the professional actuarial accreditation organization designated under Subsection (19)(a);
  - (c) is familiar with the valuation requirements applicable to a professional employer organization;
  - (d) has not been found by the commissioner, or if so found has subsequently been reinstated as a qualified actuary, following appropriate notice and hearing to have:
    - (i) violated a provision of, or an obligation imposed by, statute or other law in the course of the actuary's dealings as a qualified actuary;
    - (ii) been found guilty of a fraudulent or dishonest practice;
    - (iii) demonstrated the actuary's incompetency, lack of cooperation, or untrustworthiness to act as a qualified actuary;
    - (iv) submitted to the commissioner during the past five years, pursuant to this rule, an actuarial opinion or memorandum that the commissioner rejected because it did not meet the provisions of rule; or
    - (v) resigned or been removed as an actuary within the past five years as a result of an act or omission indicated in an adverse report on examination or as a result of failure to adhere to a generally acceptable actuarial standard; and
  - (e) has not failed to notify the commissioner of an action taken by any commissioner of another state similar to that under Subsection (19)(d).
- (20) "Temporary help service" means a service consisting of a person:
- (a) recruiting and hiring the person's own employee;
  - (b) finding another person that wants the services of that employee;
  - (c) assigning the employee to:
    - (i) perform services at or for the other person to support or supplement the other person's employees;
    - (ii) provide assistance in a special work situation such as:
      - (A) an employee absence;
      - (B) a skill shortage; or
      - (C) a seasonal workload; or
    - (iii) perform a special assignment or project; and
  - (d) customarily reassigning the employee to another organization when the employee finishes an assignment.
- (21) "Working capital" means the current assets minus the current liabilities of a professional employer organization determined in accordance with generally accepted accounting principles.

Amended by Chapter 370, 2016 General Session

**31A-40-103 Duties of the commissioner.**

- (1)
  - (a) The commissioner shall maintain a list of professional employer organizations that are licensed under this chapter.
  - (b) The commissioner shall make the list required by this Subsection (1) available to the public by electronic or other means.
- (2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commissioner:
  - (a) shall make rules to prescribe the requirements for forms required under this chapter;

- (b) may make rules to prescribe the requirements and process for correcting under Section 31A-40-205:
  - (i) a deficiency in working capital; or
  - (ii) negative working capital;
- (c) may make rules to prescribe the requirements for the review and submission of a financial statement under Section 31A-40-305:
  - (i) that are consistent with generally accepted accounting principles; and
  - (ii) including the timeliness of a financial statement; and
- (d) may make rules to prescribe the requirements and process for when a professional employer organization license is terminated by:
  - (i) voluntary surrender of the professional organization license; or
  - (ii) involuntary surrender of the professional organization license.
- (3) A rule in effect on May 5, 2008 under the repealed Title 58, Chapter 59, Professional Employer Organization Registration Act, remains in effect until such time as the commissioner modifies or repeals the rule.

Amended by Chapter 10, 2010 General Session

**31A-40-104 Confidentiality -- Cooperation with other agencies.**

- (1) Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, and except as provided in Subsection (2), (3), or (4), the commissioner or department may not disclose information obtained from a professional employer organization under this chapter.
- (2) The commissioner or department may disclose information on an aggregate basis that does not identify an individual professional employer organization or client.
- (3) The commissioner or department may disclose information obtained from a professional employer organization under this chapter to a government entity if the government entity requires the information to perform the government entity's duties.
- (4)
  - (a) The commissioner shall coordinate the commissioner's administration of this chapter and share information with:
    - (i) the Department of Workforce Services;
    - (ii) the Labor Commission; and
    - (iii) the State Tax Commission.
  - (b) An agency listed in Subsection (4)(a) shall treat the information obtained under this section as confidential unless disclosure of the information is required in accordance with:
    - (i) this title; or
    - (ii) Title 63G, Chapter 2, Government Records Access and Management Act.

Enacted by Chapter 318, 2008 General Session